

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
-vs-)	No. <u>M-17-368-STE</u>
)	
JERRY DRAKE VARNELL,)	
)	
Defendant.)	

**RESPONSE TO DEFENDANT’S MOTION TO
PRESERVE EVIDENCE AND BRIEF IN SUPPORT**

Comes now the plaintiff, United States of America, by Mark A. Yancey, United States Attorney for the Western District of Oklahoma, and Matt Dillon, Assistant United States Attorney, and respectfully offers this response to the defendant’s Motion to Preserve Evidence and Brief in Support (Doc. 26).

1. Jerry Drake Varnell was arraigned on a federal Complaint related to this matter on August 13, 2017, and current counsel, Terri Coulter, was appointed.

2. The defendant filed his Motion to Preserve Evidence and Brief in Support on the same day, September 6, 2017 (Doc. 26).

The Government has two issues with requests made by the defense. First, because of the lapse in time between the date of offense and the filing of this motion with the Court, items listed in this motion may not have been retained for case purposes and any Order should state that this applies to items in existence as of the date of the signing of the

Order. Second, some of the requests are so vague that the Government and the listed agencies in the proposed Order may find it difficult to ascertain what falls within the parameters of the proposed Order.

All responses are premised on what exists as of the date the Court issues this order. Specifically:

a. “[B]omb.” The inert vehicle borne improvised explosive device (VBIED) cannot remain in its present form without risk of degradation. The VBIED materials incorporated cardboard and a wax-type paper that may degrade over time if left in contact with the fuel component of the ammonium nitrate/fuel oil (ANFO) simulant. FBI plans to remove the inert cast boosters, inert dynamite, and inert blasting caps from the ANFO simulant. The VBIED’s time and power unit (TPU) had been previously been disconnected and removed from the front passenger seat of the vehicle to be processed and maintained for evidentiary purposes. Other items of evidence have been removed from the van to be maintained as evidence. A concealed camera and license plate have been previously removed from the van. Counsel for the defendant viewed and photographed the van and VBIED in its current state on September 13, 2017, at the FBI Oklahoma City field office. The United States believes that the VBIED and van can be otherwise preserved in its present state.

b. “[A]ll raw data.” The Government does not understand this request.

c. “[F]ield notes.” To the extent that notes about this operation were created by law enforcement and still exist at this time, the Government does not oppose this request.

d. “[I]nternal memoranda.” This request is overbroad. Memoranda may have been created on any number of issues related to this investigation including overtime, notes about gas used, etc. The Government would ask for clarification on this request so that it may properly comment on whether the items are potentially material such that an order for retention is appropriate.

e. “[L]og sheets.” The Government is unclear as to what type of logging this is meant to address.

f. “[T]ip sheets.” The Government would not oppose this request to the extent that they specifically relate to this defendant and that they are still in existence as of this time.

g. “[R]ecordings in any form.” The Government will provide video and audio recordings between the cooperating source and the defendant and the FBI undercover employee and the defendant. The Government will also provide surveillance recordings made as part of this investigation. The Government has no objection to retaining these items during the pendency of this case. The Government is unclear as to what additional materials would be sought under this that have not yet been provided and otherwise retained and what is meant by “recordings in any form.”

h. “[J]ail records.” This request is overbroad. The Government would not oppose this request to the extent that these records specifically relate to this defendant and that they are still in existence as of the time an order is issued on this motion.

i. “[T]ransportation orders.” The Government is unclear as to what is being requested to be preserved.

j. “[O]riginal evidence collection documents.” If this request is for the Government to retain physical evidence collected during the service of search warrants and/or arrests of the defendant or the documents detailing that collection, the Government has no objection to the extent that it is still in existence and within the Government’s control. The Government has no reason to believe that any booked evidence has been destroyed. If this request refers to anything else, the Government would need clarification.

k. “[A]ll other information of this type.” This is overbroad.

CONCLUSION

The Government requests that any Order issued by this Court address the issues raised herein such that any Order addresses items in existence as of the date or the

issuance of the Order and contains specificity so that the Government and law-enforcement agencies can properly comply with any Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2017, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants: Terri Coulter

s/MATT DILLON
MATT DILLON
Assistant U.S. Attorney